

# Minimum Energy Efficiency Standards (MEES) Listed Building Guidance

February 2017

## LISTED BUILDINGS

The only official advice ever issued on this subject from DCLG (copy attached) states that listed buildings do not require EPCs. This therefore is why we state this in our research paper. However, since we published the paper in 2015, we have noted a degree of debate on this and our current position is that we are unclear.

However, we provide below our 'house position' on the subject of EPCs and MEES. In sharing this with you can we please remind you that this is not formal advice and that CO2 Estates recommends you speak to solicitors on the interpretation of any Act, Regulation, Directive or Statutory Instrument.

### 1.0 Do listed buildings require an EPC?

It is our view that listed buildings do not require an EPC – but only since 9<sup>th</sup> January 2013 following the EU EPBD Recast. Before then listed buildings did require an EPC. In the meantime, an EPC can be prepared for a listed building for voluntary reasons.

However, we must highlight that the wording on this in the recast of EU EPBD Directive is poor and we understand that there may be other interpretations.

The guidance received by CO2 Estates from accreditation bodies CIBSE and Elmhurst is that EPC assessors should not provide advice on this subject. But for your general information - shortly after the release of the EU EPBD Recast, DCLG issued a statement advising that listed buildings were exempt. As well as this, in its impact assessment of the EU EPBD Recast DCLG implies the same position.

Here is a summary of the basic problem. Following the EU EPBD recast an EPC is not required in respect of 5.(1) (a) below.

## PART 2

### Duties relating to Energy Performance Certificates

#### Application of Part 2

5.—(1) This Part does not apply to—

- (a) buildings officially protected as part of a designated environment or because of their special architectural or historical merit, in so far as compliance with certain minimum energy performance requirements would unacceptably alter their character or appearance;

However, this is the EU EPBD not The Energy Act 2011 or its pursuant 2015 regulations. There are no minimum energy performance requirements in the EU EPBD for listed buildings or indeed any buildings.

Therefore, it has been widely interpreted that buildings officially protected etc. are exempt since the words after “historical merit,” are meaningless. It is also the position of the accreditation bodies that EPC assessors should not be recommending (as an example) the removal of ancient fireplaces or single pipe radiator systems etc. or all the other issues that listed buildings will have – this is a specialist subject area.

## 2.0 If a listed building has an EPC is it then subject to MEES?

Again, not sure we can answer with a 100% degree of certainty. Possibly yes, but only provided the EPC predates 9<sup>th</sup> January 2013 (But again please seek formal legal advice on this).

This is because in the MEES Regulations a building is not regarded as being a non-domestic property for the purposes of the Regulations if it was not required to have an EPC (see below).

### **Non-domestic PR property**

**20.—(1)** For the purposes of this Part, “non-domestic PR property” means a property which falls within section 42(1)(b) of the Act, subject to paragraphs (2) and (3).

(2) A property is not a non-domestic PR property if—

- (a) it was not required, and is not part of a building which was required, to have an energy performance certificate by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007, and
- (b) it is not required, and is not part of a building which is required, to have an energy performance certificate by the Building Regulations 2010 or the EPB Regulations.

In the EPBD Recast there is a reference to the 2007 Regulations and the Recast states that an EPC registered before 9<sup>th</sup> Jan 2013 is a valid EPC. See below.

“energy performance certificate” means a certificate which—

- (a) in the case of a certificate entered on the register before 9th January 2013 complied with the requirements of regulation 11(1) of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007(d);
- (b) in the case of a certificate entered on the register on or after 9th January 2013 complies with the requirements of regulation 9(1) of these Regulations; or
- (c) complies with the requirements of regulation 29(e) of the Building Regulations 2010;

In the MEES regulations a Valid EPC is defined as follows:

(c) an energy performance certificate for a property is “valid” where—

- (i) it was entered on the register required to be maintained by regulation 27(1) of the EPB Regulations no more than 10 years before the date on which it is relied on for the purposes of these Regulations, and
- (ii) no other energy performance certificate for the property has since been entered on that register.

“the EPB Regulations” means the Energy Performance of Buildings (England and Wales) Regulations 2012(b);

The Energy Performance of Buildings (England and Wales) Regulations 2012 is the EU EPBD Recast and regulation 27(1) simply refers to the requirement to maintain a register.

We conclude that if there is a valid EPC and it predates 9th January it could be captured by MEES irrespective of the listing status. If captured by MEES then any relevant energy conservation measures will be subject not only to the 7-year payback rule but also the requirements of third party consent including the consent of listed buildings etc.

We appreciate this position differs slightly from that in our research paper, the primary purpose of which was to address the question of risk to value. But given there is general uncertainty over the position, and given we use the term "are likely to be exempt" (as opposed to are exempt) we are reluctant to change our report until such a time as government clarifies the position.

